

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1594 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CHHATARSINH MANSINH MAHIDA

Versus

COMMISSIONER OF POLICE

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Appearance:

MR BC DAVE for Petitioner

MR JANI ld. AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 17/06/98

ORAL JUDGEMENT

The petitioner in this petition under Article 226 of the Constitution of India, has challenged the order of detention dated 27.2.1998 passed by the Police Commissioner, Baroda city, under sec. 3(2) of the Prevention of Anti Social Activities Act, 1985.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance

on the 4 criminal cases filed against the petitioner. All criminal cases as well as the statements of three witnesses for the alleged incidents taken place, it is alleged against the petitioner that the petitioner and his associates have beaten the witnesses and disturbed the even tempo of life. Considering this material, the detaining authority was of the view that to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to detain the petitioner and, therefore, the impugned order.

Mr BC Dave learned advocate for the petitioner has challenged the order of detention on number of grounds, however, it is not necessary to consider all the grounds, as in my opinion, the petition is required to be allowed on the first ground. Mr Dave submitted that the order of detention vitiates as the order of detention is passed after six months from the date of registration of last case. In support of his submission and to substantiate his submission, a reliance has been placed on the decision of the Supreme Court in the case of Pradeep Nilkanth Paturkar vs. S. Ramamurthi & Ors., reported in 1993 Supp (2) SCC p. 61. In the said case, criminal case was registered against the detenu in November, 1990 and January & February, 1991 and the statements of witnesses relating to the criminal cases recorded in March, 1991 only after release of detenu on bail. Proposal for detention was submitted by sponsoring authority in April, 1991. Proposal accepted in July and detention order passed in August, 1991 relying on the cases registered against detenu and statements made by the witnesses and referring to the statements in the grounds of detention. There was delay in passing the detention order of over 5 months from the date of registration of the last case and over four months from submission of the proposal. Under the circumstances, the Supreme Court held that on facts, unexplained delay, whether short or long, especially when appellant had taken a specific plea of delay, vitiated the detention order. In the present case also, all criminal cases under various provisions of IPC have been registered, the details of which are as under:

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CR No. IPC Muddamal Disposal  
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I-378/97 147,149,452,376 Cutody of house P.I.

22.8.97 384,323,504,506

(2) of IPC &  
under sec.3(10)  
of Atrocities

Act.

I-397/97 384,114,506(2) Cash Rs. P.I.  
4.9.97 of IPC & Under 50,000/  
sec.135 of BP  
Act.

I-317/96 384,511,506(2) Cash Rs. P.T.  
17.7.96 & 120(B) 24,13,000/.

I-372/97 307,504 of IPC Revolver & P.T.  
16.8.97 & u/s.25(1)C Cartridges.  
of Arms Act &  
u/s.135 of BP  
Act.

Perusing this statement, it is clear that the last case being CR No. I-397/97 was registered against the detenu on 4.9.1997 and, the date of passing impugned order is 27.2.1998. Thus, there is a delay of about five months in passing the order of detention. So far as the statements of witnesses are concerned, they are recorded on 11.2.1998, 17.2.1998 and 16.2.1998 respectively, that is just few days prior to the passing of detention order when the petitioner was already on bail. Considering this fact, I am of the view that the decision rendered by the Supreme Court in the case of Pradeep Nilkanth Paturkar (supra) is squarely applies to the facts of the present case. In view of this, unexplained delay of five months in passing the order of detention, in my opinion, vitiates the detention of the petitioner.

In the result, this petition is allowed. The impugned order of detention dated 27.2.1998 is set aside. The petitioner is ordered to be released forthwith, if he is not required for any other lawful reason. Rule made absolute with no order as to costs.

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